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November 8, 2017

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Room TWA325
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation
WT Docket No. 17-79; WC Docket No. 17-84**

Dear Ms. Dortch:

On Monday, November 6, 2017, Tim Strafford, Associate General Counsel of the Association of American Railroads ("AAR"),¹ along with Michele Farquhar and Arpan Sura, outside counsel for AAR, met with Suzanne Tetreault, Charles Mathias, Jeffrey Steinberg, and Jill Springer of the Wireless Telecommunications Bureau. The parties discussed the Commission's efforts to remove barriers to wireless infrastructure deployment.

We urged the Commission to include railroad communications infrastructure as part of its efforts to streamline review under the National Environmental Policy Act ("NEPA") and the National Historic Preservation Act ("NHPA"). As we explained, any streamlining reforms should apply equally to all new wireless infrastructure, including Positive Train Control ("PTC") and non-PTC poles.

We also addressed the railroads' experience under the *PTC Program Comment*.² AAR has had a constructive relationship with the Commission, the historic preservation community, and the Native American Tribes in developing the *PTC Program Comment*, and it has appreciated the Commission's efforts to help streamline the process for deploying PTC infrastructure. Nevertheless, AAR's members continue to unnecessarily perform Section 106 reviews where there is no likelihood of adverse effects. Indeed, approximately 99.98 percent of the 17,201 deployments submitted for Section 106 review since the *PTC Program Comment*'s adoption have resulted in a finding of no adverse effects.³ Of the 710 (or more) floodplain reviews conducted since May 2014, there have been zero findings of environmental

¹ AAR is a voluntary non-profit membership organization whose freight railroad members operate 83 percent of the line-haul mileage, employ 95 percent of the workers, and account for 97 percent of the freight revenues of all railroads in the United States. AAR members also include Amtrak, the nation's principal intercity passenger railroad, and Metra, the primary commuter railroad serving the Chicago metropolitan area. More information on AAR is available at its website: <https://www.aar.org/Pages/Home.aspx>.

² See *Wireless Telecommunications Bureau Announces Adoption of Program Comment to Govern Review of Positive Train Control Wayside Facilities*, Public Notice, 29 FCC Rcd 5340, Attachment (WTB 2014) ("*PTC Program Comment*").

³ See Comments of the Association of American Railroads, WT Docket No. 17-79, at App'x A (June 15, 2017).

impact.⁴ The Commission can accelerate timely deployment of advanced communications systems that will improve rail safety and efficiency by categorically excluding from review most wireless communications technology and related PTC and non-PTC structures used along railroad transportation corridors, rights-of-way, and rail yards.

We also noted that AAR's members continue to face excessive delays and fees during the tribal review process, which impedes the timely deployment of PTC infrastructure. Since the *PTC Program Comment* was adopted, AAR's members have cumulatively spent at least \$27,795,900 in tribal and consultative fees to comply with Section 106 review.⁵ One AAR member, for example, spends as much as \$6,300 on average for each site subject to the *PTC Program Comment*. Many tribes are also aggressively expanding their geographic areas of interest. One national railroad, for instance, reports that 32 tribes on average now express interest in reviewing a given deployment.⁶ In the absence of a broader exclusion along the railroad corridors, the Commission can rectify these issues by (i) adopting a shorter and more definitive deadline for the tribal review process whereby clearances are deemed granted after certain delays, and (ii) limiting the circumstances under which railroads are expected to pay tribal review fees. Additionally, the Commission should take steps to streamline the process or reduce the frequency for NEPA review of PTC poles on floodplains along railroad transportation corridors and rights-of-way.

Finally, we noted that the Commission lacks statutory authority to prescribe the terms and conditions by which railroads grant access over their rights-of-way. Section 224 of the Communications Act unambiguously excludes "any railroad" from the legal obligations associated with rights-of-way access.⁷ In any event, important federal policies and safety considerations militate against interfering with bilateral private negotiations between railroads and telecommunications providers.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed in the above-referenced dockets. Please contact me with any questions.

Respectfully submitted,

/s/ Michele C. Farquhar

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⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at iii.

⁷ See 47 U.S.C. § 224(a)(1) ("The term 'utility' means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. **Such term does not include any railroad**, any person who is cooperatively organized, or any person owned by the Federal Government or any State.") (emphasis added).